

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS,
HOUSTON DIVISION

PENA'S CONCRETE &
DEMOLITION, INC.,

Petitioner,

v.

C.A. No. _____

Petition to Quash Summons

UNITED STATES OF AMERICA,

Respondent

PETITION TO QUASH SUMMONS

Petitioner files this Petition to Quash Summons under Internal Revenue Code Sec. 7609(h).

1. Petitioner is Pena's Concrete & Demolition, Inc.
2. Respondent is the Internal Revenue Service, by virtue of and named as the United States of America. Respondent may be served as follows: A copy of the Summons and Complaint is to be mailed by certified mail, return receipt requested, to the U.S. Attorney's Office for the Southern District of Texas, P.O. Box 61129, Houston, Texas 77208, Attention: Civil Process Clerk; with additional copy of Summons and Complaint by certified mail, return receipt requested, to the U.S. Attorney General, Department of Justice, 950 Pennsylvania Avenue NW, Washington, D.C. 20530, and additional copy of the Summons and Complaint by certified mail, return receipt requested, to the Internal Revenue Service, 8701 South Gessner, Stop 5432 HAL, Houston, Texas 77074-2926; R. Dovalina, Revenue Officer.
3. The basis for the Court's jurisdiction is under the Internal Revenue Code Sec. 7609(h).
4. The names and addresses of the persons to which summons have been issued,

both dated March 11, 2010, and the records or testimony sought by the summons as they relate to that person or entity are as follows:

- a. United Central Bank, Attention: Legal Department, 4555 West Walnut Street, Garland, Texas 75042, with respect to the following records:
 - (1) Copies of all signature cards relative to the accounts, open and closed, of PENA'S CONCRETE & DEMOLITION, INC., for the period APRIL 1, 2007 TO THE PRESENT;
 - (2) Copies of all corporate resolutions relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC., for the period APRIL 1, 2007 TO THE PRESENT;
 - (3) Copies of all financial statements relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC., for the period APRIL 1, 2007 TO THE PRESENT;
 - (4) Copies of all loan agreements relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC., for the period APRIL 1, 2007 TO THE PRESENT;
 - (5) Copies of 1 checks issued by the taxpayer for each month for the period APRIL 1, 2007 TO THE PRESENT. Please provide 1 check for each signer on account along with associated statements.
- b. Compass Bank, Attention: Research Department, 701 South 20th Street, Suite 1802, Birmingham, Alabama 35233, with respect to the following records:
 - (1) Copies of all signature cards relative to the accounts, open and closed, of PENA'S CONCRETE & DEMOLITION, INC., for the period APRIL 1, 2007 TO THE PRESENT;
 - (2) Copies of all corporate resolutions relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC., for the period APRIL 1, 2007 TO THE PRESENT;
 - (3) Copies of all financial statements relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC., for the period APRIL 1, 2007 TO THE PRESENT;
 - (4) Copies of all loan agreements relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC., for the period APRIL 1, 2007 TO THE PRESENT;

(5) Copies of 1 checks issued by the taxpayer for each month for the period APRIL 1, 2007 TO THE PRESENT. Please provide 1 check for each signer on account along with associated statements.

5. Attached hereto is a copy of the Summons issued to those two entities upon which the Internal Revenue Service is seeking records.

6. The records sought are too broad and overreaching, as they encompass the period from April 1, 2007 to the present. The Internal Revenue Service has questioned nonpayment of 940 and 941 taxes for the periods consisting only of the last three quarters of 2007 and first two quarters of 2008 only. Contact has been made with the officer of the Internal Revenue Service issuing the Summons by Pena's Concrete & Demolition, Inc.'s representatives offering to voluntarily procure the records for the applicable periods of time from both banking institutions to which the Summons have been issued. Such offer has not been responded to. The voluminous nature of the Summons request and overbreadth would create a substantial time delay, potential negative effect on the listed banking institutions' relationship with Pena's Concrete & Demolition, Inc., and unwarranted bank research fees and expenses. The Summons also requests all "financial statements", "loan agreements", and "corporate resolutions" relative to accounts of the Petitioner at such financial institutions which do not relate in any way to the payment of wages or 940 and 941 taxes for the period the last three quarters of 2007 and the first two quarters of 2008, but may relate to proprietary information requested by those banking institutions. Pena's Concrete & Demolition, Inc. does not owe 940 and 941 taxes as alleged by the Internal Revenue Service for the last three quarters of 2007 and the first two quarters in 2008, and has requested that a full review and reconciliation be made with the Internal Revenue Service with respect to claimed amounts due and owing for those two quarters in 2008, as well as the last three quarters in 2007.

7. A copy of this Petition is being transmitted by certified mail, return receipt

requested, to the following listed persons or entities as required under Internal Revenue Code, Section 6709(b)(2)(b):

Internal Revenue Service, 8701 South Gessner, Stop 5432 HAL, Houston, Texas 77074-2926; R. Dovalina, Revenue Officer;

United Central Bank, Attention: Legal Department, 4555 West Walnut Street, Garland, Texas 75042

Compass Bank, Attention: Research Department, 701 South 20th Street, Suite 1802, Birmingham, Alabama 35233

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that the Summons described and attached hereto as to Compass Bank and United Central Bank be in all things quashed.

Respectfully submitted,

Ewing & Jones, P.L.L.C.

By

G. Riley Hetherington
Texas Bar No. 09554500
Federal No. 6041
6363 Woodway, Suite 1000
Houston, Texas 77057
Telephone: (713) 590-9600
Facsimile: (713) 590-9602

Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that a copy of Petition to Quash Summons was served on March 31, 2010, by certified U.S. mail, return receipt requested, on the following:

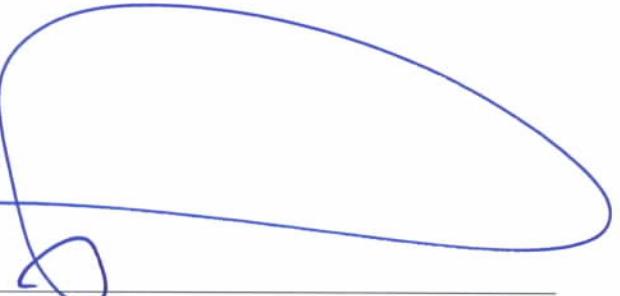
U.S. Attorney's Office for the
Southern District of Texas
P.O. Box 61129
Houston, Texas 77208
Attn: Civil Process Clerk

U.S. Attorney General
Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C. 20530

Internal Revenue Service
8702 South Gessner, Stop 5432 HAL
Houston, Texas 77074-2926
R. Dovalina, Revenue Officer

United Central Bank
Attention: Legal Department
4555 West Walnut Street
Garland, Texas 75042

Compass Bank
Attention: Research Department
701 South 20th Street, Suite 1802
Birmingham, Alabama 35233


G. Riley Hetherington



Summons

In the matter of JOHN WATSON, JR AS PRESIDENT OF PENA'S CONCRETE & DEMOLITION, INC

Internal Revenue Service (Division): Small Business / Self Employed

Industry/Area (name or number): Small Business / Self Employed - Area 25

Periods: 06-30-2007, 09-30-2007, 12-31-2007, 03-31-2008, 06-30-2008

The Commissioner of Internal Revenue

To: UNITED CENTRAL BANK

At: ATTN: LEGAL DEPT 4555 W WALNUT ST, GARLAND, TX 75042

You are hereby summoned and required to appear before R DOVALINA, an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

- (1) Copies of all signature cards relative to the accounts, open and closed, of PENA'S CONCRETE & DEMOLITION, INC #71-0948803, for the period APRIL 1, 2007 TO THE PRESENT;
- (2) Copies of all corporate resolutions relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC #71-0948803, for the period APRIL 1, 2007 TO THE PRESENT;
- (3) Copies of all financial statements relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC #71-0948803, for the period APRIL 1, 2007 TO THE PRESENT;
- (4) Copies of all loan agreements relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC #71-0948803, for the period APRIL 1, 2007 TO THE PRESENT;
- (5) Copies of 1 checks issued by the taxpayer for each month for the period APRIL 1, 2007 TO THE PRESENT. Please provide 1 check for each signer on account along with associated statements.

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

8701 S GESSNER, STOP 5432HAL, HOUSTON, TX 77074-2926 - (281)721-7142

Place and time for appearance at: 8701 S GESSNER, STOP 5432HAL, HOUSTON, TX 77074-2926



on the 13th day of April, 2010 at 09:30 o'clock A m.

Issued under authority of the Internal Revenue Code this 11th day of March, 2010

Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 2039(Rev. 12-2008)
Catalog Number 21405J

R DOVALINA

Signature of Issuing Officer

REVENUE OFFICER

Title

ACTING MANAGER

Title

Signature of Approving Officer (if applicable)

Part C -- to be given to noticee



Summons

In the matter of JOHN WATSON, JR AS PRESIDENT OF PENA'S CONCRETE & DEMOLITION INC

Internal Revenue Service (Division): Small Business / Self Employed

Industry/Area (name or number): Small Business / Self Employed - Area 25

Periods: 06-30-2007, 09-30-2007, 12-31-2007, 03-31-2008, 06-30-2008

The Commissioner of Internal Revenue

To: COMPASS BANK

At: ATTN: RESEARCH DEPT, 701 S. 20TH ST, STE 1802, BIRMINGHAM, AL 35233

You are hereby summoned and required to appear before R DOVALINA, an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

- (1) Copies of all signature cards relative to the accounts, open and closed, of PENA'S CONCRETE & DEMOLITION, INC, for the period APRIL 1, 2007 TO THE PRESENT;
- (2) Copies of all corporate resolutions relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC, for the period APRIL 1, 2007 TO THE PRESENT;
- (3) Copies of all financial statements relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC, for the period APRIL 1, 2007 TO THE PRESENT;
- (4) Copies of all loan agreements relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC, for the period APRIL 1, 2007 TO THE PRESENT;
- (5) Copies of 1 checks issued by the taxpayer for each month for the period APRIL 1, 2007 TO THE PRESENT. Please provide 1 check for each signer on account along with associated statements.

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Business address and telephone number of IRS officer before whom you are to appear:

8701 S GESSNER, STOP 5432HAL, HOUSTON, TX 77074-2926 - (281)721-7142

Place and time for appearance at: 8701 S GESSNER, STOP 5432HAL, HOUSTON, TX 77074-2926



on the 13th day of April, 2010 at 09:30 o'clock A m.

Issued under authority of the Internal Revenue Code this 9th day of March, 2010

Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 2039(Rev. 12-2008)
Catalog Number 21405J

R DOVALINA

Signature of Issuing Officer

REVENUE OFFICER

Title

ACTING MANAGER

Title

Signature of Approving Officer (if applicable)

Part C -- to be given to noticee